IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 89/2005 IN SUIT NO.929/2004

Jyioti Diwakar Mishra. ...Plaintiff.
Vs.
Amar @ Brijesh Diwakar Mishra. ...Defendant.
And
Shivkumar Mishra and ors. ...Applicants.

Mr. D.V. Merchant i/by P.M.Shah for the Plaintiff.
Mr. D.H. Mehta i/by R.D.Suvarna for the Defendant.

CORAM : A.M. KHANWILKAR, J.
DATED : 5TH JULY, 2005

P.C.:

1. Heard counsel for the plaintiff and the defendant.

2. The applicants have been duly served. None appears. No reply is filed on their behalf. In so far as defendant is concerned, the objection to this application is that no cause of action is made out to support this application so as to implead the respondent Nos. 1 to 3 as defendant Nos. 2 to 4. Besides, the plaintiff has not spelt out what are the consequential amendments which plaintiff intends to incorporate in the plaint.

3. Both these contentions are countered by the counsel for the plaintiff. According to him, the suit is essentially for partition. The claim of the plaintiff is that she is the duly wedded wife of the deceased Diwakar Mishra. The respondent No.1 is the first wife and divorced by the deceased. Thereafter, marriage with the plaintiff was entered into. The respondent Nos. 2 and 3 are the children out of the first wife, who was divorced by the deceased. In that sense, the respondent Nos. 1 to 3 are the proper parties to the suit and their presence is necessary for full, complete and effectual determination of issues that may arise.

4. There is however, substance in the objection taken on behalf of the defendant that the plaintiff has not spelt out what are the consequential amendments which she intends to incorporate in the plaint. In response to this contention, the counsel for the plaintiff on instructions states that the consequential amendments are only in respect of providing description of the parties, their relations and their respective shares in the disputed property. If this is the nature of amendment proposed by the plaintiff as consequential amendment, in that case, the same deserve to be

granted while permitting the respondent Nos. 1 to 3 to be impleaded as defendants to the suit.

5. Accordingly, chamber summons is made absolute in terms of prayer clause (a). The plaintiff to carry out the necessary amendment on the above terms within two weeks from today. No order as to costs.

6. Needless, to mention that all the contentions of the respective parties on merits of the case are left open and this order is not an expression on the said aspect of the matter in any manner.

(A.M. KHANWILKAR,J.)